

1984 S.C. Op. Atty. Gen. 56 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-20, 1984 WL 159828

Office of the Attorney General

State of South Carolina

Opinion No. 84-20

February 22, 1984

*1 Henry V. Sawyer, O.D.

Secretary

South Carolina Board of Examiners In Optometry

Post Office Drawer 1149

Marion, South Carolina 29571

Dear Dr. Sawyer:

You have asked our advice as to what measures the Optometry Board must take, pursuant to the Freedom of Information Act, to notify the public of its Board meetings.

South Carolina's Freedom of Information Act, codified at [§ 30–4–10 et seq., Code of Laws of South Carolina](#) (1976 as amended), was enacted in its present form in 1978. (Act No. 593 of 1978). In the Act's preamble, the General Assembly made the following findings:

... it is vital in a democratic society that public business be performed in an open and public manner as it conducts its business so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, this act is adopted, making it possible for citizens, or their representatives to learn and report fully the activities of their public officials. (emphasis added).

Open Meeting Requirements

To fulfill this broad purpose, the General Assembly has declared, in § 30–4–60 of the Act, that unless specifically excepted, '[e]very meeting of all public bodies shall be open to the public . . .'

In view of the legislative purpose, this office only recently noted that the Freedom of Information Act 'is statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly.' *Op. Atty. Gen.*, August 8, 1983. In reliance upon [Town of Palm Beach v. Gradison, \(Fla.\), 296 So.2d 473, 477 \(1974\)](#), we stated: 'When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.' *Supra* at 9. Accordingly, we concluded:

The Freedom of Information Act applies to any meeting of a public body, as defined in the Act, whether the meeting is designated as formal or informal and whether action is taken upon public business or merely discussed. A public body may not ignore the requirements of the Act when it discusses public business over which it has supervision, control, jurisdiction or advisory power by holding a meeting, as defined in an informal or social setting.

Thus, it is clear to us the General Assembly intended, with very few exceptions, that all 'meetings' held by a 'public body' are to be open to the public.

Purpose of Notification Provisions

But, as your inquiry suggests, there must also be ample notice to the public of public meetings. For, it is generally recognized that if no steps are taken to make the public aware that a public meeting is taking place, the fact that the meeting is open is rendered 'virtually meaningless.' [Bensalem Tp. Sch. Dist. v. Gigliotti Corp., \(Pa.\), 415 A.2d 123, 125 \(1980\)](#). As the Pennsylvania Supreme Court stated in [Consumers Education and Protective Assn. v. Nolan, 470 Pa. 372, 384, n. 4, 368 A.2d 675, 681, n. 4 \(1977\)](#),

*2 . . . adequate notice to the public at large is an integral part of the public meeting concept; a meeting cannot be deemed to be public merely because its doors are opened to the public if the public is not properly informed of its time and place.

Certainly, in the present Freedom of Information Act, the General Assembly has recognized this. As mentioned, the preamble of the Act speak of the Legislature's intent that the public 'learn' of the activities of public officials. More specifically, an entire section of the FOIA, § 30–4–80, is devoted to the procedures required for notifying the public of public meetings. That section provides in pertinent part:

(a) All public bodies shall give written public notice of their regular meetings at the beginning of each calendar year. The notice shall include the dates, times and places of such meetings. Agendas, if any, for regularly scheduled meetings shall be posted on a bulletin board at the office or meeting place of the public body at least twenty four hours prior to such meetings. All public bodies shall post on such bulletin board public notice for any called, scheduled or re-scheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty four hours before the meeting. The notice shall include the agenda, date, time and place of the meeting. This requirement shall not apply to emergency meetings of public bodies.

(d) All public bodies shall make an effort to notify local news media, or such other news media as may request notification of the times, dates, places and agenda of all public meetings, whether scheduled, re-scheduled or called and the efforts made to comply with this requirement shall be noted in the minutes of the meeting

As with other portions of the Act, these notice provisions must be liberally construed to effectuate their clear legislative purpose, i.e. adequate notice to the public. And, without doubt, these notice requirements may not be simply ignored by the public body; they are mandatory. See, [White v. Battaglia, 434 N.Y.S.2d 537 \(1980\)](#). The section requires overt and affirmative action by the public body to fulfill the notice requirements. [Hyde v. Banking Bd., \(Colo.\), 552 P.2d 32 \(1976\)](#); [Jenkins v. Newark Bd. of Ed., 166 N.J.Super. 357, 399 A.2d 1034 \(1979\)](#). We will now briefly discuss the Act's basic requirements concerning notice.

Regular Meetings

Section 30–4–80 first requires every public body, as defined to give notice of its 'regular meetings' at the beginning of each calendar year. A 'regular' meeting is usually convened at stated times and places pursuant to statute or resolution. [Barile v. City Comptroller, 288 N.Y.S.2d 191, 196 \(1968\)](#). Notice of regular meetings must contain the dates, times and places of the meetings. If there is an agenda, it must be posted on a bulletin board at the office or meeting place of the public body at least twenty four hours prior to the meeting.

Called, Scheduled or Re-scheduled Meetings

*3 Next, § 30–4–80 deals with called, scheduled or re-scheduled meetings; notice of these meetings must be given prior to holding each such meeting. This notice, again, must be posted on a bulletin board at the office or meeting place of the public body.¹ And it must be posted 'as early as practicable'; the Legislature's choice of this broad language set forth in mandatory terms clearly demonstrates its intent that the public body give as much notice as possible under the circumstances. A useful rule of thumb, appearing to comport with such intent is: the farther in advance a meeting is scheduled or called, the earlier the

notice should be posted. At an absolute minimum, however, notice must be posted twenty four hours in advance of the meeting. This notice must contain the agenda, date, time and place of the meeting.

'Emergency' Meetings

Only 'emergency' meetings are exempted from the notice requirements stated above. Since no definition of 'emergency' is contained in the Act, the plain and ordinary meaning of the word must be deemed controlling. [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148 (1980). The South Carolina Supreme Court has defined an 'emergency' as 'an unforeseen occurrence or combination of circumstances which call for immediate action or remedy; pressing necessity; exigency.' [Hice v. Dobson Lumber Co.](#), 180 S.C. 259, 269, 185 S.E. 742 (1935). This office has recently stated that any exception to the policy of open meetings must be narrowly construed. *Op. Atty. Gen.*, August 8, 1983, *supra*. The same holds true for the notice requirements. Accordingly, the emergency must be real, and determined in light of the situation; simply the declaration of an emergency by a public body is not enough. *See, Jenkins v. Newark Bd. of Ed.*, *supra*.

Notification of News Media

Finally, subsection (d) of § 30–4–80 requires public bodies to 'make an effort to notify local news media, or such other news media as may request notification of the times, dates, places and agenda of all public meetings whether scheduled, re-scheduled or called . . .'. As with the posting of notice, this requirement cannot be ignored. *White v. Battaglia*, *supra*. The obvious legislative purpose in imposing this requirement is to assure greater public awareness concerning public meetings than even the posting of notice could accomplish.² *See, Jones v. East Windsor Reg. Bd. of Ed.*, 143 N.J.Super. 182, 362 A.2d 1228 (1976). Therefore, as with the posting of notice, such notification to the media must be timely if the legislative purpose is to be effectuated.

While subsection (d) of § 30–4–80 is not entirely unambiguous, we believe a better reading of the subsection, in light of the liberal interpretation required to be given the Act, is to impose an affirmative duty upon the public body' to make an effort to notify the local news media . . .³ A good inexpensive practice to accomplish this requirement might be to mail the very same notice, which the public body posts, to newspapers of general circulation in the area, as well as to representatives of the broadcast media. So long as the notice itself is complete (time, date, place and agenda of the meeting) is adequately disseminated, and is forwarded to the media as far in advance of the meeting as is practicable, it would appear the requirement of subsection (d) has been met. In addition, as the Act states, if the public body receives a request for information concerning a meeting from 'other media', this request should be honored, again informing the media of the time, place, date and agenda of the meeting. The extent of the public body's 'efforts made to comply with these various requirements for notifying the media should be well documented in the minutes of the body's meetings.

*4 We are aware that the extent of notice which need be given depends to a certain degree upon the particular situation. Certainly there are instances where a true emergency arises or where only the minimum twenty four hour notice of a meeting can be given. However, the public body should comply not only with the letter but with the spirit of the Freedom of Information Act.

Accordingly, we would advise that in the absence of truly exigent circumstances, the Act requires a public body to give notice in the manner prescribed above of the time, place, date and agenda of its meetings; such notice is to be given as far in advance of the meeting as is practicable, but in no event not less than twenty four hours before the meeting.

Sincerely,

T. Travis Medlock
Attorney General

Footnotes

¹ Of course, the Act does not limit the placement of notices. Section 30–4–80(c) states that written public notice 'shall include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office

exists, at the building in which the meeting is to be held.' (emphasis added). Obviously, the more widespread the notice given by the public body, the more with which the spirit of the Act is complied.

- 2 It is evident that subsection (b) serves a dual purpose in this regard. By requiring notification to the media, the Act first provides an additional method for informing members of the public of the time, place, date and agenda of the meeting so that the general public may attend if it desires. Secondly, notification to the media provides the opportunity for the media itself to perform its traditional role of informing the public by reporting the news. As Justice Powell recently wrote:

No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities. For most citizens the prospect of personal familiarity with newsworthy events is hopelessly unrealistic. In seeking out the news the press therefore acts as an agent of the public at large. It is the means by which the people receive that free flow of information and ideas essential to intelligent self-government.

[Saxbe v. Washington Post Co.](#), 417 U.S. 843, 863 (1974) [Powell, J., dissenting].

- 3 The subsection arguably could be read literally as requiring notification to the local news media only when requested by the local media. We believe the broad legislative purpose suggests a less literal reading, however see, [S.C. State Bd. of Dental Examiners v. Breeland](#), 208 S.C. 469, 38 S.E.2d 644 (1946); [Fulghan v. Bleakley](#), 177 S.C. 286, 181 S.E. 30 (1935).

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